

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

-----X  
MARUBENI CORPORATION,

Plaintiff,

CIVIL ACTION NO. \_\_\_\_

v.

**ADMIRALTY**

INTERGIS CO., LTD.

Defendant,

-----X

**VERIFIED COMPLAINT**

Plaintiff, MARUBENI CORPORATION (“Marubeni”), by its attorneys, K&L GATES, LLP, as and for its Verified Complaint against the Defendant INTERGIS CO., LTD. (“Intergis”), alleges upon information and belief as follows:

**JURISDICTION**

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and also falls under this Court’s admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333.

2. The Court also has jurisdiction pursuant to 9 U.S.C. § 1, *et seq.* and 9 U.S.C. § 201, *et seq.*

3. Marubeni brings this action to obtain security for a maritime claim pursuant to Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Rule B”) seeking an order and writ of maritime attachment and garnishment over a vessel which is presently located within the District.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### THE PARTIES

5. At all times relevant hereto, Plaintiff Marubeni is and was a foreign business entity organized under the laws of Japan, with its principal place of business in Tokyo, Japan.

6. At all times relevant hereto, Defendant Intergis is and was a foreign business entity organized under the laws of South Korea, its principal place of business in Busan, South Korea. Upon information and belief, Intergis is the Beneficial Owner, Ship Manager, Commercial Manager, and ISM Manager of the M/V DK INITIO (IMO No. 9528160) (the “Vessel”). A true and correct copy of the Vessel’s Equasis report is attached hereto as Exhibit “A”. According to Equasis, the Registered Owner of the Vessel is DKC SA, with an address at the “Care of Intergis Co Ltd. . . .” Additionally, Intergis’ website<sup>1</sup> lists the Vessel as a vessel in Intergis’ fleet.

7. The Vessel is now, or shortly will be, within the jurisdiction of this Court.

### FACTS

8. Marubeni and Intergis entered into a voyage charter on an amended Baltimore Form C charter party form dated January 24, 2014 (the “Charterparty”). A true and correct copy of the Charterparty is attached as Exhibit “B.”

9. Under the Charterparty, Marubeni chartered from Intergis a bulk carrier to be nominated (by Intergis) to load 60,000 metric tons of soybeans in bulk in Brazil for carriage to China.

10. Intergis subsequently nominated the vessel under the Charterparty to be the M/V ADAMASTOS (the “ADAMASTOS”).

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<sup>1</sup> Available at, <http://www.intergis.co.kr/eng/business/ship.asp>

11. The Charterparty expressly provided as follows:

a. Clause 1

“That the said vessel, being tight, staunch and strong and in every way fit for the voyage shall with all convenient speed proceed . . . .” (emphasis added)

12. A booking note (no. 108465) dated 24 January 2014, recorded the terms of the Charterparty, expressly provided:

“VSL SUITABLE IN ALL RESPECT FOR THE LOADING, CARRIAGE AND DISCHARGE OF BULK HSS FROM SOUTH AMERICA TO CHINA, VSL TO BE CLASSED LLOYDS 100+A1 OR EQUIV.” (emphasis added)

13. The ADAMASTOS arrived at the load port in Brazil on July 31, 2014, and by August 6, 2014, had loaded 59,674.680 metric tons of soybeans (the “Cargo”).

14. Marubeni was at all material times the owner of the Cargo and/or at all material times the Cargo was shipped at its risk.

15. On August 5, 2014, the ADAMASTOS was inspected by local maritime authorities, who found forty-two deficiencies with the ADAMASTOS.

16. On August 6, 2014, the ADAMASTOS, whilst still loading her cargo, broke free of her moorings and grounded.

17. The ADAMASTOS was refloated, but was not permitted to re-berth alongside to load any remaining cargo without (a) a letter of guarantee in the sum of BRL1 million and (b) an approved berthing plan. The ADAMASTOS was ordered to proceed to, and anchor in, the outer anchorage.

18. Thereafter, despite repeated requests by Marubeni that Intergis perform its contractual and statutory duties to properly care for and deliver the Cargo, Intergis took no (or no adequate) steps to remedy the deficiencies in the ADAMASTOS; did not

complete the loading of the ADAMASTOS; did not commence the voyage or carry the Cargo on board the ADAMASTOS to China; and eventually abandoned the ADAMASTOS, the contractual voyage, and/or the Cargo itself.

19. On December 18, 2014, more than four months after the ADAMASTOS broke free of her moorings and grounded, Intergis was notified of the cargo's deteriorating condition (i.e., that "live and dead insects and larvae [were found] in holds 1 and 7 and increasing temperatures suggest[ed] the beginning of deterioration.").

20. Marubeni, through its subsidiary Marubeni America Corp., paid the original seller of the soybeans US\$32,626,534.54, plus an additional US\$138,662.77 in interest charges for late payment. A true and correct copy of the January 23, 2014 sale and purchase agreement is attached as Exhibit "C."

21. Marubeni was forced to enter into a distress sale of the Cargo and sold it for US\$3,350,000 pursuant to a sale and purchase agreement dated April 2, 2015. A true and correct copy of the April 2, 2015 sale and purchase agreement is attached as Exhibit "D." The Cargo was sold on an "as is, where is" basis onboard the ADAMASTOS.

22. Had the Cargo been carried to its contractual port of discharge under the Charterparty, Marubeni would have sold the Cargo for US\$36,000,000 DES (delivery ex ship). Alternatively, the market value of the Cargo was US\$36,000,000 CIF (cost, insurance and freight) at a Chinese port in late August/early September 2014.

AS FOR A CAUSE OF ACTION FOR  
BREACH OF THE MARITIME CONTRACTS

23. Pursuant to the express terms and conditions of the Charterparty and the terms implied by applicable statute therein, Intergis agreed to provide a seaworthy and suitable vessel, and to properly care for and deliver the Cargo from Brazil to China.

24. Intergis breached the express and implied terms of the Charterparty by:

- a. failing to take any or any adequate steps to remedy the deficiencies in the ADAMASTOS;
- b. failing to complete the loading of the ADAMASTOS;
- c. failing to commence the voyage to China;
- d. failing to carry the Cargo onboard the ADAMASTOS to China;
- e. abandoning the ADAMASTOS;
- f. abandoning the contractual voyage;
- g. abandoning the carriage of the Cargo; and/or
- h. abandoning the Cargo itself.

25. Intergis' breaches of the express and implied terms of the Charterparty caused Marubeni damages in an amount in excess of US\$36,000,000.

26. Intergis is liable for Marubeni's damages under the Charterparty.

PENDING ARBITRATION PROCEEDINGS IN LONDON

27. Pursuant to the terms of the Charterparty, Marubeni initiated arbitration proceedings against Intergis and its affiliate, Dongkuk Steel Mill Group, in London, United Kingdom (the "London Arbitration") to recover its damages.

28. Marubeni filed its Claim Submissions in the London Arbitration on April 29, 2016, alleging, *inter alia*, breaches by Intergis of the Chartparty as set out above.

29. Marubeni seeks US\$32,840,193.92 in the London Arbitration (US\$36,000,000 value of the cargo, less US\$3,350,000 recovered in the distress sale, plus certain commissions, fees, and interest payments).

30. No security has been provided in the London Arbitration.

RULE B ATTACHMENT

31. Marubeni repeats and realleges the foregoing paragraphs as if fully set forth herein.

32. Marubeni brings this action solely to obtain quasi in rem jurisdiction over Intergis and security for its claim in the London Arbitration.

33. Upon information and belief, Intergis cannot be found within this District within the meaning of Rule B (see accompanying Declaration of Elizabeth A. Gilman).

34. However, Intergis' property, namely, the M/V DK INITIO (IMO No. 9528160), is found within this District.

35. The total amount to be restrained and attached as security for Marubeni's claim is US\$32,840,193.92, together with interest and costs as provided for in Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

36. Because this Verified Complaint sets forth an *in personam* maritime claim against the Defendant and because the Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, the requirements for a Rule B attachment and garnishment are met and Plaintiff seeks the issuance of process of maritime attachment so that it may obtain security for its claims against Defendant and/or *quasi in rem* jurisdiction over the property of the Defendant so that an eventual judgment and/or award can be satisfied.

37.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marubeni prays as follows:

38. That an order of maritime attachment and garnishment may issue against the Defendant in accordance with Supplemental Admiralty Rule B; and if Defendant cannot be found within this district, that its goods, chattels and credits within the District, and particularly the Vessel, M/V DK INITIO (IMO No. 9528160), may be attached in an amount sufficient to answer Marubeni's claim;

39. That the Defendant, and any other person claiming an interest therein, be summoned to appear and answer this Verified Complaint;

40. That judgment be entered in favor of Marubeni against Defendant in the amount of US\$32,840,193.92, together with interest and costs as provided for in Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.;

41. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof; and,

42. That Plaintiff have such other and further relief as the Court may determine to be just and proper under the circumstances.

Dated: Houston, Texas  
July 25, 2016

K&L GATES, LLP

By:

/s/ Elizabeth A. Gilman  
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**ATTORNEYS FOR PLAINTIFF  
MARUBENI CORPORATION**



# **EXHIBIT A**



## Equasis - Ship folder DK INITIO

imo: 9528160

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- Use of a robot or similar remote device to download large batches of data.

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## Ship informations

### • Ship particulars

Information		Since
IMO number :	9528160	
Name of ship :	DK INITIO	(since 01/10/2010)
Call sign :	H3UU	
MMSI :	356411000	
Gross tonnage :	34349	(since 01/10/2010)
DWT :	58655	
Type of ship :	Bulk Carrier	(since 01/10/2010)
Year of build :	2010	
Flag :	Panama	(since 01/09/2010)
Status of ship :	In Service/Commission	(since 01/10/2010)
Last update :	31/05/2016	

• **Management detail**

IMO	Role	Name of company	Address	Date of effect
5442432	ISM Manager	INTERGIS CO LTD	Marine Center Building, 52, Chungjang-daero 9beon-gil, Jung-gu, Busan, 600-715, South Korea.	since 07/02/2016
5442432	Ship manager/ Commercial manager	INTERGIS CO LTD	Marine Center Building, 52, Chungjang-daero 9beon-gil, Jung-gu, Busan, 600-715, South Korea.	since 01/09/2015
5442432	Beneficial Owner	INTERGIS CO LTD	Marine Center Building, 52, Chungjang-daero 9beon-gil, Jung-gu, Busan, 600-715, South Korea.	since 17/10/2012
5566517	Registered owner	DKC SA	Care of Intergis Co Ltd , Marine Center Building, 52, Chungjang-daero 9beon-gil, Jung-gu, Busan, 600-715, South Korea.	since 01/10/2010

• **Classification surveys**

Classification society	Date survey	Date next survey
Korean Register of Shipping (IACS)	18/09/2015	04/10/2020

• **Safety management certificate**

Classification society	Date survey	Date expiry	Date of status	Status	Reason	Type
Korean Register of Shipping (IACS)	07/02/2016	06/08/2016	07/02/2016	Delivered		Convention

• **P&I information**

Name of P&I insurer	Recorded on
North of England P&I Association	23/06/2016

## Ship inspections

### • List of port state control

PSC organisation	Authority	Port of inspection	Date of report	Detention	Duration (days)	Number of deficiencies
Mediterranean MoU	Turkey	Kocaeli	30/03/2016	N	0	
US Coast Guard	United States of America	Houston, Texas	07/12/2015	N	0	1
Vina Del Mar MoU	Mexico	MANZANILLO COL	13/11/2015	N	0	
Tokyo MoU	Philippines	Surigao	13/07/2015			
Vina Del Mar MoU	Brazil	ITACURUCA	29/11/2014	N	0	
US Coast Guard	United States of America	Brownsville, Texas	07/10/2014	N	0	
Tokyo MoU	Philippines	Surigao	16/05/2014			
Tokyo MoU	Japan	Fukuoka	17/10/2013			
Tokyo MoU	Korea (Republic of)	Gwangyang	19/06/2013			
US Coast Guard	United States of America	Houston, Texas	23/02/2013	N	0	
Vina Del Mar MoU	Mexico	ALTAMIRA TAM	20/02/2013	N	0	
Paris MoU	Spain	Cartagena	19/07/2012	N	0	
Tokyo MoU			26/10/2011			
Tokyo MoU			21/06/2011			
Tokyo MoU			25/03/2011			



## Ship history

### • Current and former name(s)

Name of ship	Date of effect	Source
DK INITIO	since 01/10/2010	IHS Maritime

### • Current and former flag(s)

Flag	Date of effect	Source
Panama	since 01/09/2010	IHS Maritime

### • Current and former classification status

Classification society	Date of survey	Sources
Korean Register of Shipping (IACS)	18/09/2015	Korean Register of Shipping
Korean Register of Shipping (IACS)	05/10/2010	Korean Register of Shipping

### • Company

Company	Role	Date of effect	Sources
INTERGIS CO LTD	ISM Manager	since 07/02/2016	
INTERGIS CO LTD	Ship manager/ Commercial manager	since 01/09/2015	
STX MARINE SERVICE CO LTD	Ship manager/ Commercial manager	since 01/12/2014	
INTERGIS CO LTD	Beneficial Owner	since 17/10/2012	
HANJOO MARITIME CO LTD	ISM Manager	since 24/03/2011	
HANJOO MARITIME CO LTD	Ship manager/ Commercial manager	since 01/10/2010	

• **Company**

Company	Role	Date of effect	Sources
DKC SA	Registered owner	since 01/10/2010	
BLUE MINE PTE LTD	Ship manager/ Commercial manager	since 30/09/2010	
JU MARINE SA	Ship manager/ Commercial manager	since 30/09/2010	
DONGKUK MARINE CO LTD	Registered owner	since 30/09/2010	
BLUE MINE PTE LTD	Registered owner	since 30/09/2010	
JU MARINE SA	Registered owner	since 30/09/2010	
BLUE MINE PTE LTD	Ship manager/ Commercial manager	since 30/08/2010	
DONGKUK MARINE CO LTD	Beneficial Owner	since 15/07/2010	
UNKNOWN	Beneficial Owner	since 29/04/2010	
BLUE MINE PTE LTD	Beneficial Owner	since 24/04/2009	

# **EXHIBIT B**

20432  
697

FIRST  
ORIGINAL

APPROVED BY NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INCORPORATED, NEW YORK  
NORTH AMERICAN SHIPPERS ASSOCIATION, LONDON  
NEW YORK PRODUCE EXCHANGE, NEW YORK

Amended 1st July 1974

*Oslo: ..... 8th March ..... 19 ..... 2013*

It is this day Mutually Agreed, between INTERGIS CO. LTD (DONGKUK STEEL MILL GROUP), KOREA

DISPOSITION	.....	disponent owners/owners/chartered owners of the	2
VESSEL	..... (Reg) SS/MV Dry Cargo/Fanker "INTERGIS CO. LTD TBN"(see Clause 56)	..... Call Sign: .....	3

built \_\_\_\_\_ at \_\_\_\_\_ of \_\_\_\_\_ tons of 2,240 lbs. 4

total deadweight, or thereabouts, on a Summer draft of ..... feet ..... inches salt water, and guaranteed ..... 5

tons of 2,240 lbs.; ..... percent more or less cargo capacity, quantity at owners' option, classed ..... in ..... 6

HOW  7

RTERRERS and MARUBENI CORP. , 9

Charterers, of TOKYO, JAPAN 10

1. That the said vessel, being tight, staunch and strong, and in every way fit for the voyage, shall with all convenient speed proceed to : *one (1) safe berth RIO* 11

NG PORT(S) *GRANDE, SAO FRANCISCO DO SUL, SANTOS with 42' draft basis 60,000 / 10%* 12

07: 13

one (1) safe berth ARATU, basis 60,000 / 10%

*Charterers' option to load at a second safe berth (always within same port) with shifting expenses, if any, to be for Charterers' account and time used for shifting to count as laytime.*

and there load, always afloat, a full and complete cargo, in bulk, subject to limits above guarantee, of ~~WHEAT and/or CORN and/or RYE and/or SORGHUMS and/or~~ 14

SOYBEANS, at Charterers' option. Charterers also have the option of loading ..... 15



	one (1) cargo as follows:	16
	60,000 metric tons 10% more or less in Owners' option bulk SOYBEANS, stowage factor about 48 cubic feet / metric ton without guarantee.	17
	To be loaded in clean, clear and unobstructed main cargo holds, no wing tanks, or places that are inaccessible to Charterers' / Receivers' grabs.	
	Owners warrant the vessel is able to load, stow and carry the cargo, as described without any bagging, strapping or securing.	
RATIONS	2. Cost of cargo separations, in excess of three, to be for Charterers' account.	18
ICE OF BUSINESS	3. a) Master to advise (telegraphic address): E-mail: <i>info@pasternakbaum.com</i> and also load port agents 5 / 3 / 1 day(s) notice of	19
	expected readiness at loading range when vessel sails from last port on previous voyage and also approximate quantity of cargo required. Master or Owners to advise	20
	(telegraphic address:) <i>info@pasternakbaum.com</i> and also agents ..... of any change in the vessel's expected time of arrival at loading range, whilst on passage.	21
ING PORT ERS	b) Master to apply by radio to ..... (telegraphic address: ".....")	22
	for first or sole loading port orders 96 hours before the vessel is due off at ..... and Charterers/Agents are to give first or	23
	sole loading port orders by radio within 48 hours of receipt of Master's application, unless given earlier. If Master's application is received on a Saturday, the time allowed	24
	to Charterers shall be 52 hours instead of 48 hours as above.	25
SEL CTION	4. Vessel to load under inspection of National Cargo Bureau, Inc., and a Grain Inspector holding a licence issued by the United States Department of Agriculture	26
	pursuant to the U.S. Grain Standards Act, in U.S.A. ports, or of the Port Warden and a Grain Inspector employed by the Canada Department of Agriculture, in Canadian	27
	ports, or the regulatory body pertaining to grain loading in the country the vessel is loading, at her expense, and to comply with their rules, not exceeding what	28
	she can reasonably stow and carry over and above her Cabin, Tackle, Apparel, Provisions,	
	Fuel and Furniture, and being so loaded shall therewith proceed to one (1) safe berth, one (1) safe port NORTH CHINA (NINGBO and NORTH) Charterers'	29
NATION	option one (1) safe berth, one (1) safe port SOUTH CHINA (Charterers guarantee minimum 13 metres salt water arrival draft for the 60,000 / 10%	30
	The discharge port is to be named by Charterers soonest known but latest passing SINGAPORE.	31
	..... as ordered on signing Bills of Lading, and deliver same.	32
ARGING S) ORDERS	according to Bills of Lading, always afloat, except where customary for vessels of similar size to lie safely aground, or at Charterers' option, Master to apply by radio to	33
	Charterers/Agents (telegraphic address: .....)	34
	for first or sole discharging port orders 96 hours before vessel is due off at ..... and Charterers/Agents are to give first or sole discharging port orders by radio within 48 hours of receipt of Master's application unless given earlier. If Master's application	35
	is received on a Saturday the time allowed to Charterers or their Agents shall be 52 hours instead of 48 hours.	36
		37
IT RATE(S)	5. Rate of freight all per metric ton, free in / out, spout trimmed and as per elevator weights:	38
	Basis SANTOS 42' for 60,000 / 10%	39

U.S.\$ 39.75 (Thirty Nine Dollars and Seventy Five Cents United States Currency) basis NINGBO and NORTH	40
U.S.\$ 38.25 (Thirty Eight Dollars and Twenty Five Cents United States Currency) basis SOUTH of NINGBO	41
Basis RIO GRANDE, SAO FRANCISCO DO SUL 42' for 60,000 / 10%.....	42
U.S.\$ 40.00 (Forty Dollars United States Currency) basis NINGBO and NORTH	43
U.S.\$ 38.50 (Thirty Eight Dollars and Fifty Cents United States Currency) basis SOUTH of NINGBO	
Basis ARATU 60,000 / 10% where a displacement restriction of 88,450 apply	
U.S.\$ 40.75 (Forty Dollars and Seventy Five Cents United States Currency) basis NINGBO and NORTH	
U.S.\$ 39.25 (Thirty Nine Dollars and Twenty Five Cents United States Currency) basis SOUTH of NINGBO	
All rates are per metric ton, free in / out, spout trimmed.	
<b>YANGTZE RIVER DISCHARGING CLAUSE:</b> (Lightening Clause)	
In the event vessel is required to complete discharge at one (1) safe port in the YANGTZE RIVER, the discharge port is not to be above the Port of NANJING.	
At lightening port / anchorage, the vessel's Notice of Readiness to be tendered and accepted at customary port / anchorage WIBON / WIPON / WIFPON / W'CON during working hours of 08:00 -- 17:00 Monday to Friday and laytime is to commence at 08:00 hours the next working day after acceptance of Notice of Readiness and cease upon vessel completion of discharge at second discharging port in YANGTZE RIVER.	
However, actual shifting time from the mouth of the river to final discharging port / berth or anchorage will be excluded from laytime. All ports disbursement for Owners' account, including tonnage dues.	
The costs for lightening to be for the Charterers' / Receivers' account. Owners to pay port charges for the YANGTZE RIVER port.	
Additional premium for discharge YANGTZE RIVER Port as described above is U.S.\$ 1.50 (One Dollar and Fifty Cents United States Currency) per metric ton up to ZHANGJIAGANG and U.S.\$ 2.00 (Two Dollars United States Currency) up to NANJING.	
Any lightening / lighterage due to draft, all costs / risks for lightening to be for Charterers' / Receivers' account and time used to count as laytime.	
Shifting time to count, even if the vessel shifting ordered by port authority.	

PORTS	6	Charterers have the option to load the vessel at a second port at .....	44
		..... extra .....	45

	<del>Orders for second port of loading, if used, to be given to Master</del>	46
		47
	7 Charterers have the option to discharge the vessel at a second port at	48
	extra	49
	<del>Orders for second port of discharge, if used, to be given to Master</del>	50
ENT OF	8. See Clause 66 If vessel discharges in the UNITED KINGDOM including NORTHERN IRELAND, freight shall be payable concurrently with discharge, to Owners or their	51
CHIT	designated Agents at	52
	for drafts of 2 lbs. per 2000 lbs. of grain discharged if weighed at time of discharge by approved Hopper Scale in drafts of 2000 lbs. or over.	53
	9. For all other destinations freight shall be payable concurrently with discharge to Owners or their designated Agents at port or ports of discharge on outturn weights, in United States funds or at Charterers/Receivers' option, in local currency, freely transferable to United States funds	54
		55
		56
		57
		58
IG BILLS	10. Captain to call at Charterers', or their Agents' office as requested, and sign Bills of Lading as presented in the form customary for grain cargoes, without prejudice to this Charter Party. If Bills of Lading are not ready for signature, the Captain is to deliver to Charterers, or their Agents at loading port(s) a signed copy of his written authority to his agents at loading port(s) to sign Bills of Lading on his behalf <i>in strict accordance with Mate's Receipt</i> . In the event Charterers require that bills	59
ADING	of lading show a rate of freight different from that indicated above, Charterers guarantee to pay Owners full freight in accordance with this contract, to be adjusted at the time of final freight settlement (See Clause 68)	60
		61
DORES AT	11. Stevedores at loading port(s) employed and paid by vessel to be approved by Shippers/Charterers, except if vessel is loaded at Stowage to be under Master's supervision. Master to be responsible for the stability upon sailing.	62
		63
IG PORT(S)		64
	then Charterers' Stevedores to be appointed at	65
	(rates current at the loading berth(s)) (published tariff rate). In all cases Stevedores to be paid by the Owners and to remain their servants.	66
MEAT	12. Vessel to be loaded according to Berth Terms in, and spout trimmed, free of any risk, liability and expense to the vessel / Owners, at the average rate of 8,000 metric tons per weather working days of twenty-four	67
HNC	consecutive hours each, Friday 24:00 Hours ~ Sunday 24:00 Hours, Saturdays, Sundays and Holidays excepted, even if used. Any additional trimming to be for Owners' account. Laytime on Saturdays to be computed as follows:	68
	a) Notwithstanding any custom of the Port to the contrary, Saturday shall not count as laytime at loading and discharging port or ports where stowdoring labour and/or grain handling facilities are unavailable on Saturday or available only at overtime and/or premium rates.	69
	b) In ports where only part of Saturday is affected by such conditions, as described under (a) above, laytime shall count until the expiration of the last straight time period.	70
	c) Where six or more hours of work are performed at normal rates, Saturday shall count as a full lay day.	71
DISCHARGE	13 a) If vessel is delayed longer at loading port(s) than provided in clause 12 Charterers to pay Owners demurrage at the rate of maximum U.S. \$ 25,000.00 ~ to	72
		73
		74

	<del>be declared on vessel nomination (see Clause 45)</del>	
DISBURSEMENT	per day or pro rata for part of a day provided such delay shall occur by fault of Charterers or their agents. If sooner despatched Owners to pay Charterers	75
	despatch at <del>half the nominated demurrage rate</del> per day or pro rata for part of a day for all laytime saved. <i>Laytime non-reversible.</i>	76
	Charterers to have the option to deduct <del>agreed</del> despatch at <del>load port</del> from payment of freight.	77
	b) If vessel is delayed longer at the discharge port(s) or despatched sooner than provided in Clause 20, then Owners to collect demurrage or pay despatch as	78
	per rates above.	79
NOTIFICATION OF	14 <i>See Clause 44.</i> Notification of the vessel's readiness to load and/or discharge at the first or sole loading or discharging port must be delivered at the office of	80
READY TO LOAD	Charterers/Receivers or their Agents, at or before 4 P.M. 8 A.M. on any normal business day (or at or before 12 o'clock noon, if on Saturday, unless Saturday is a holiday).	81
	Vessel	
DISCHARGE	also having been entered at the Custom House, accompanied at loading port(s) by <i>local authorities:</i>	82
	a) <del>In United States Ports:</del>	83
	i. <del>Certificate of readiness for all Cargo Compartments issued by the National Cargo Bureau, Inc.;</del>	84
	ii. <del>Certificate that all Cargo Compartments are free of insect infestation, and objectionable odours issued by a Grain Inspector holding a licence</del>	85
	<del>issued by the U.S. Department of Agriculture pursuant to the U.S. Grain Standards Act, or other official body customarily issuing such</del>	86
	<del>certificate;</del>	87
	b) <del>in Canadian ports:</del>	88
	i. <del>Certificate of Readiness for all Cargo Compartments issued by the Port Warden;</del>	89
	ii. <del>Certificate that all Cargo Compartments are free of insect infestation, and objectionable odours issued by a Grain Inspector employed by the</del>	90
	<del>Canada Department of Agriculture or other official body customarily issuing such certificate(s) (and/or U.S. Grain Inspector if loading U.S.</del>	91
	<del>grain in a Canadian port)</del>	92
	and also confirmation, in Master's Notice of Readiness that Vessel's gear certificate as required by U.S. Department of Labour, or any similar authority,	93
	where applicable, is in order;	94
	and the laydays will then commence at 8 A.M. on the next business day, whether in berth or not.	95
	<del>At second and subsequent ports of loading and/or discharge, if used, time to count at the beginning of the next regular working period after notification of vessel's</del>	96
	<del>readiness to load or discharge has been delivered at the office of the Charterers/Receivers or their agents during ordinary business hours; vessel also having been</del>	97
	<del>entered at the Custom House, whether in berth or not.</del>	98
DAYS	15 Time for loading, if required by Charterers, not to commence before 8 A.M. on the opening layday. 19	99
	<i>Lay/Can:</i>	
	<i>1st May 2013 / 31st May 2013, to be narrowed to a 10 day spread 40 days prior to the opening layday.</i>	
	<i>Cargo size to be declared by the Charterers 40 days prior to the opening layday.</i>	
LOADING DATE	16. Should the Notice of Readiness at loading port not be delivered as per Clause 14 44 by twelve o'clock noon on the	100
	day of 19, the Charterers or their Agents shall at said hour and at any time thereafter, but not later than the	101
	presentation of Notice of Readiness together with the required certificates <i>as per Clause 44 D</i> at said office, have the option of cancelling this Charter Party.	102
THIS	17. a) At loading port(s) Charterers are entitled to up to three loading berths per port free of expense to Charterers. Charterers also have the liberty of additional	103
	loading berths per port, and for berths used over three at each port, all shifting expenses including bunker fuel used to be for Charterers' account and all laytime used for	104
	shifting to count.	105
	b) At each port of discharge Charterers/Receivers have the option of two or more discharging berths, all shifting expenses including bunker fuel used to be for	106
	Charterers/Receivers' account, and all laytime used for shifting to count.	107
	c) Shifting/warping as ordered by the Elevator Authorities/Port Authorities/National Cargo Bureau/Port Warden for any purpose is to be for the Charterers' account and time used to count as laytime but is not to be counted as addi-	108

	tional loading/discharging berths	109
	18. Any securing (bagging or strapping, etc.) required by Master, National Cargo Bureau or Port Warden for safe trim/stowage to be supplied by and paid for by Owners and time used not to count as laytime.	110
OUTRIGGL SCOW	19. <del>If vessel is unable to enter Avonmouth or Hull or Glasgow immediately upon arrival owing to congestion, vessel shall be permitted to tender on arrival at anchorage in Walton Bay or Spurn Head or Tail of the Bank, as applicable, and laytime to commence in accordance with clause 14. Time shifting from anchorage to discharge berth not to count as laytime.</del>	111
		112
		113
		114
ARGE TERMS	20. Cargo to be discharged/received at the average rate of <i>(see Clause 44)</i> tons per weather working day of 24 consecutive hours each, provided vessel can deliver at this rate, Sundays and Holidays excepted. Saturdays to be completed as per clause 12.	115
		116
	<i>Discharging to be effected under Master's direction and supervision.</i>	117
		118
BORES AT RGE PORT(S)	21. Stevedores at discharge to be appointed by <i>and paid by Receivers</i> and paid by	119
	<del>If discharging in the United Kingdom including Northern Ireland, and if required by Charterers, vessel to discharge at Receivers' berth, provided same is accessible and available and workable on arrival, or time to count. When discharging at Receivers' wharf or berth if required, Receivers' stevedores to be employed at the current rate of the port at the time of commencement of discharge.</del>	120
		121
		122
RTUITY TRIM	22. <del>If ordered to discharge at two (2) or more ports, vessel is to be left in seaworthy trim to Master's satisfaction to proceed between ports.</del>	123
TIME	23. Overtime at loading and discharging ports shall be for account of the party ordering same, except overtime for vessel's officers and crew always to be for Owners' account.	124
		125
ES POWER	24. <del>If required, master to give free use of vessel's winches and power to drive the gear, runners, ropes and slings as on board, and winchmen from the crew. If shore regulations do not permit the crew to work winches, then shore winchmen, if used, to be for Charterers' account at leading port(s) and Receivers' account at discharging port(s). Master also to give free use of vessel's lighting as on board, if required, for night work.</del>	126
LIGHTS		127
		128
AGE CLAUSE	25. Should the vessel be ordered to discharge at a place at which there is not sufficient water for her to get the first tide after arrival without lightening, and lie always afloat, lay days are to count from 48 hours after her arrival at a safe anchorage for similar vessels bound for such place and any lighterage incurred to enable her to reach the place of discharge is to be at the expense and risk of the <i>Charterers</i> / Receiver of the cargo; any custom of the port or place to the contrary notwithstanding,	129
	but time occupied in proceeding from the anchorage to the port of discharge is not to count.	130
		131
ITS	26. <i>Charterers'</i> Agents to be employed at loading port(s) and <i>Charterers'</i> Agents to be employed at discharging port(s).	132
		133
	27. At <i>loading and</i> discharging port(s), vessel to open hatches and remove beams, also to close hatches and replace beams all at vessel's time, risk and expense, <i>providing local regulations permit, failing which same to be for Charterers' time / expense.</i>	134
	Dismantling of shifting boards and/or bulking if any at discharging port(s) to be at Owners' time, risk and expense.	135
ERAGE	28. A brokerage commission of 1.25 percent on gross freight, dead freight and demurrage is payable by Owners to <i>PASTERNAK, BAUM &amp; CO. INC + 1.25% to CLARKSON'S</i>	136
SSION	<i>and is deductible from freight.</i>	137
		138
	<del>vessel lost or not lost, this contract performed or not performed, and all such commission shall be considered earned and due upon signing of this Charter Party. With Charterers' approval this brokerage commission may be deducted from the freight at time of payment, for remittance to broker(s).</del>	139
		140

ADDRESS	29. An address commission of ..... 1.25 ..... % on gross freight, dead freight and demurrage is due to charterers on shipment of cargo, vessel lost or not lost, charterers having the right to deduct such commission from payment of freight.	141 142
2	30. Vessel to have a lien on the cargo for all freight, dead freight, demurrage or average.	143
CLAUSE	31. Charterers' liability under this Charter to cease on cargo being shipped, except for payment of freight / deadfreight / demurrage save for any responsibility expressly stated or implied elsewhere in this Charter Party.	144
PAIDMENT	32. Charterers, or their Agents, have the privilege of transferring/assigning all or part of this Charter to others, guaranteeing to the Owners the due fulfillment of this Charter.	145 146
AL AVERAGE	33. General Average shall be payable according to the York/Antwerp Rules 1974 as amended 1994 and be settled in London.	147
ASON	34. Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:	148
USE	"In the event of accident, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequences of which, the carrier is not responsible, by nature, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.	149 150 151 152
	— If a sailing ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said sailing ship or ships belonged to strangers. Such deposit as the carrier or his agent may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the pilots, shippers, consignees or owners of the goods to the carrier before delivery."	153 154 155 156
TRATION	35. Arbitration in London (see Clause 65) Any dispute between Owners and Charterers arising out of this Charter shall be arbitrated at New York in the following manner:	157
YORK	(One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The arbitrators shall be commercial men.	158 159
PRATION	36. All disputes from time to time arising out of this contract shall, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrator of two Arbitrators carrying on business in London who shall be Members of the Baltic and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. Any claim must be made in writing, and Claimants' Arbitrator appointed within three months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred.	160 161 162 163
ASON	No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his acting be taken before the award is made.	164 165
USE	37. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause, whatsoever occurring, by barratry of the master or crew, by piracy, pirates or robbers, by arrests and restraint of Princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager).	166 167 168 169 170 171
URKS	38. (1) VOYAGE 1993 to apply. No Bills of Lading to be signed for any blocked port and if the port of discharge be declared blockaded after Bills of Lading have been signed or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter he or she shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government the owner shall discharge the cargo at any other port covered by this Charter party as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.	172 173 174 175 176
SE	(2) The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof or by any other Government or	177 178



any department thereof or any person acting or purporting to act with the authority of such Government, or of any department thereof, or by any committee or person having, under the terms of the War-Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

39. If the cargo cannot be loaded by reason of riots, civil commotions or of a strike or lock-out of any class of workmen essential to the loading of the cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by riots, civil commotions or a strike or lock-out on the railways, or in the docks, or other loading places, or if the cargo cannot be discharged by reason of riots, civil commotions, or of a strike or lock-out of any class of workmen essential to the discharge, the time for loading and/or discharging, as the case may be, shall not count during the continuance of such causes, provided that a strike or lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage from accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the strike or lock-out. In case of any delay by reason of the beforementioned causes, no claim for damages or demurrage shall be made by the Charterers/Receivers of the cargo, or Owners of the ship. For the purpose, however, of settling despatch accounts, any time lost by the ship through any of the above causes at loading port(s) shall be counted only as time used in loading, and, if occurring at discharging port(s) only to be counted as time used in discharging.

40. The ship shall have the liberty as part of the contract voyage to proceed to any port or ports at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charter Party and may there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks and deep tanks and any other compartment in which oil can be carried, whether such amount is or is not required for the chartered voyage.

41. If the liability for any collision in which the ship is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the Owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and the charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

42. *Clause 42 and 43 are to be either deleted or to remain as printed, contingent on where the vessel loads be it, the United States, Canada or South America.* It is also mutually agreed that this contract shall be completed and superseded by the signing of Bills of Lading which shall be deemed to incorporate the above clauses as well as containing the following additional clause(s):

"This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further."

"This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities, or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent, but no further."

*Clauses 43 to 69, both inclusive, to be fully incorporated in this Charter Party.*

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CHARTER PARTY DATED OSLO: 8<sup>TH</sup> MARCH 2013**

**Clause 43:**

Cargo to be discharged free of expenses to the vessel at the rate of 8,000 metric tons (eight thousand) per weather working day of twenty four (24) consecutive hours, Saturdays, Sundays and Holidays excluded even if used. Time from 00:01 Hours Saturday, or 24:00 Hours on day prior Holiday, until 24:00 Hours Sunday, or 00:01 Hours on day after holiday, not to count, even if used.

**Clause 44 ~ Notice of Readiness and Commencement of Laytime:**

a) Load Port:

Notice of vessel's readiness to load at the first or sole loading port shall be delivered in writing at the office of Charterers / Receivers or their agents between the hours of 08:00 Hours to 16:00 Hours on all days except Sundays and Holidays and between the hours of 08:00 Hours to 12:00 Hours on Saturdays. Charterers shall not be required to accept Notice of Readiness to load on Saturdays after 12:00 Hours or on Sundays or Holidays. Such Notice of Readiness shall be delivered when vessel is in the loading berth and is in all respects ready to load, including free pratique where applicable. If the loading berth is unavailable, Master may tender vessel's Notice of Readiness from a lay berth or anchorage within the commercial limits of the port whether in port, berth, free pratique or Customs cleared or not subject to the provisions of Clause 44 paragraph C.

Following receipt of Notice of Readiness to load as above, laytime will commence at 08:00 Hours on the next working day, Saturdays, Sundays and Holidays excepted per agreed terms.

b) Discharge Port:

Notice of vessel's readiness to discharge must be delivered at the office of Receivers or their agents between the hours of 08:00 to 17:00 Hours Monday to Friday and between 08:00 ~ 12:00 Hours Saturday after vessel's entrance into berth, vessel also having been entered at the Customs house, after granting free pratique and time will commence at first or sole port of discharge at 08:00 Hours on the next working day.

In case the berth is occupied by other vessel(s) and docking is preventing for this reason, notification of vessel's readiness to discharge must be delivered at the office of Receivers between the hours of 08:00 to 17:00 Hours Monday to Friday, vessel having been entered at the Custom House, after granting free pratique and the laytime shall then commence at 08:00 Hours on the next business day whether in berth or not, whether in port, berth, free pratique or Customs cleared or not, but any prior time used not to count as laytime. In the event that it is impossible to obtain customs clearance / free pratique from anchorage then time to count after arrival as per Charter Party.

Actual time occupied in moving from place of waiting to discharge not to count as laytime, unless vessel is already on demurrage. If after berthing the vessel is found not to be ready in all respects to discharge, the actual time lost from the discovery thereof until she is in fact ready to discharge shall not count as laytime.

Time used prior commencement of laytime not to count both ends.

Shifting time from pilot station or anchorage to 1<sup>st</sup> berth not to count as laytime.



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Laytime to cease after 17:00 Hours before a local, legal or public holiday and resume at 08:00 Hours on the day following a local, legal or public holiday.

c) Waiting for Berth:

If the vessel is prevented from entering the commercial limits of the loading / discharging ports because the first or sole loading / discharging berth or a lay berth or anchorage is not available, or on the order of the Charterers or any competent official body or authority and the Master warrants that the vessel is physically ready in all respects to load or discharge, the time spent waiting at a usual waiting place outside the commercial limits of the port or off the port shall count against laytime. Such laytime shall count from vessel's arrival at such waiting place and will continue to run as per Charter Party terms until any of the aforesaid conditions cease to be operative and vessel is so notified by Charterers or their agents or any competent authority. If after entering the commercial limits of the loading port, vessel fails to pass inspections as per Clause 44 d), such inspections from the time of initial failure to pass not to count as laytime, but the time spent waiting outside the commercial limits of the port shall count. Shifting time from layberth / anchorage to load berth not to count as laytime.

Once the vessel has reached a place within the commercial limits of the port, Notice of Readiness is to be tendered in accordance with the provisions of the first paragraph of 44 a) above and laytime is to begin to count in accordance with second paragraph of 44 a) above.

d) Inspection:

At the loading port Master's Notice of Readiness shall be accompanied by a Pass of the NCB and USDA (or local Grain Inspector depending which country the vessel loads) Grain Inspector's Certificate of vessel's readiness in all compartments to be loaded, for the entire cargo covered by this Charter Party as per Clause 1.

Notice of Readiness for discharge to be accepted also if tendered between 08:00 Hours and 12:00 Hours Saturdays.

**Clause 45 – Demurrage / Despatch:**

Demurrage / despatch to be declared by Owners together with vessel nomination (see Clause 56), but same to be maximum U.S.\$25,000.00 (Twenty Five Thousand Dollars United States Currency) per day or pro-rata for part of a day, for all time used in excess of allowed laytime, provided such detention shall not have occurred by default of Owners / Master or their agents. Actual demurrage rate to be in Owners' option and declarable on nomination of the performing vessel 12 (twelve) days prior to vessels ETA. It is understood that the demurrage rate declared by Owners will be the same at both load and discharge. If sooner dispatched, Charterers to collect from Owners despatch money at the rate of one half of the demurrage rate per day or pro rata for part of a day for all laytime saved.

Laytime is non-reversible.

Agreed demurrage / despatch, if any, to be paid within 30 (thirty) days after completion of discharge.

**Clause 46:**

All freight rates are basis free in and out, spout trimmed only. Any additional trimming required to be for Owners' time, risk and expense.



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Clause 47:

Vessel will furnish lights as may be available on board, during day and night at Owners' expense if required by Charterers or Receivers. Vessel / Master to give free use of vessel's power to drive the running, ropes and slings on board.

Clause 48:

If fumigation at discharging port is necessary, time used to count as laytime or time on demurrage. Cost of fumigation and/or all expenses including transportation / accommodation / meals for Officers / crew to go on shore for Charterers' account.

Clause 49:

The vessel is to be fully covered for the duration of this Charter by a P. & I. Club which is to be a member of the International Association of P. & I. Clubs.

Clause 50:

Owners to supply certification evidence that vessel Classified 100 A1 according to Lloyd's Register or equivalent and in this last case the certificates will have to stipulate that the classification mentioned corresponds to 100 A1 under the Lloyd's Register. The vessel's Classification Society to be a full member of the IACS.

Clause 51:

Sailing notice and estimated time of arrival:

1. Upon completion of loading Owners shall give a sailing notice by telex to Receiver at country of destination (telex number / cable address to be advised at time of declaring discharge area).

Such sailing notice shall indicate vessel's name, port of loading, commodity and quantity loaded, vessel's draft and length overall, time of sailing and estimated time of arrival at discharging port, also 7 / 5 / 3 / 2 / 1 day(s) of vessel's ETA.

2. Discharge port is to be named by Charterers soonest known but latest passing SINGAPORE.
3. Four (4) days prior to vessel's estimated time of arrival at the discharging end, the Master to telex the Charterers / Receivers, the following information:

1. Radio call letters
2. Estimated time of arrival at discharging port

Master to cable Charterers' / Receivers' designated address, to be advised together with vessel's agents, vessel's most precise ETA as per Clause No. 3.

Clause 52:

Master to inform discharge port agents or their representatives of any problem which might arise during discharge operations and to copy of all telexes, faxes and letters they send covering unloading and laytime calculations.



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**Clause 53:**

Owners warrant that vessel is approved by their own Classification Society or an organisation acceptable thereto for the carriage of bulk grain under the applicable SOLAS Regulations and Owners further warrant that approved information relating to disposition from trimming ends of filled holds will be on board on arrival at loading port, any trimming required over the above the agreed spout trimming to be for Owners' account and time so used not to count as laytime (or time on demurrage).

**Clause 54:**

All opening and closing of hatches at discharging port to be for Owners' account, provided permitted by local regulations.

**Clause 55:**

In accordance with local regulations Owners to remit funds to cover ships disbursements before arrival at destination. Owners hereby undertake to remit such funds to their agents in due time.

**Clause 56 ~ Nomination Clause:**

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Vessel to be nominated 12 days prior to ETA load port. Upon vessel nomination advise full chain up to including Head Owner.

Vessel to be a single deck, geared or gearless, self-trimming, bulk carrier

Vessel to be maximum 20 years in age, Additional Premium to be for Owners' account. 15 years and older in accordance to Lloyds Scale.

Vessel to be suitable in all respects for the loading, carriage and discharge of bulk HSS from South America to China.

Vessel to be classed Lloyds 100+A1 or equivalent.

Vessel to be fully covered for the duration of this Charter by P. & I. Club which to be a member of the International Association of P. & I. Clubs.

**Clause 57:**

Owners shall comply with any and all federal, state, provincial or local regulations to financial responsibility for water pollution.

Any time lost on account of vessel's non-compliance with federal, state, provincial or local statutory or regulatory requirements pertaining to water pollution shall not count as laytime or time on demurrage and Owners shall indemnify Charterers for any penalties or damages incurred by Charterers as a result of Owners' non-compliance with such statutory or regulatory requirements.



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**Clause 58:**

All discharge expenses including unstowage and lighterage / lightening, if any, to be for Charterers' / Receivers' risk and expense. Time used for lighterage / lightening to count as laytime provided vessel has arrived with draft not exceeding 12.2 meters salt water.

**Clause 59 – Sanction Clause:**

Owners warrant that no vessel covered by this Charter Party or Contract of Affreightment is registered, owned or controlled by the Government of Cuba, Iraq, Iran or North Korea.

**Clause 60 – Asian Gypsv Moth Clause:**

Owners to warrant that vessel has not called at any Commonwealth of Independent State Far East ports including but not limited to Nakhodka, Vladivostok and Vostochny in last two years.

Prior to tendering vessel's Notice of Readiness vessel to be in compliance with local regulations to load contracted cargo.

**Clause 61 – Fumigation:**

Charterers have the right to fumigate vessel's holds, compartments, hatchways and cargo while on board. Cost, risk and time of such fumigation to be for Charterers' account and time to count as laytime.

All costs associated with removal of fumigation sleeves to be for Owners' account.

**Clause 62:**

Any trimming required by Master / Owners in excess of spout trimming is to be at Owners' time, risk and expense and time so used is not to count as laytime or time on demurrage.

**Clause 63:**

Vessel shall provide adequate lighting as on board for night work in the holds. Vessel shall supply drinking water to stowedores at discharge free of charge.

**Clause 64:**

Charterers or their agents shall have the right of being on board the vessel while loading or discharging for the purpose of supervising their interests, subject to Owners' / Head Owners' approval.

**Clause 65 – Arbitration:**

Notwithstanding anything to the contrary in this Charter Party, the parties agree that all arbitration where the amount in issue in the dispute(s) is less than U.S.\$ 50,000.00 shall be conducted according to the Small Claims Procedure 1994 (SCP) of the London Maritime Arbitrators Association (as amended from time to time).



**RIDER CLAUSES TO M.V. "INTERGIS CO. LTD TBN"**  
**CHARTER PARTY DATED OSLO: 8<sup>TH</sup> MARCH 2013**

Any disputes arising under this Charter to be referred to arbitration in London in accordance with LMAA Terms, with English Law to apply. One arbitrator to be nominated by Owners and the other by Charterers. In case the two arbitrators shall not agree, then an umpire to be appointed by them. The award of the arbitrators or the Umpire to be final and binding upon both parties. If either of the appointed arbitrators refuses to act or is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place. If one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid in seven clear days after the other party having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent. Arbitrators to be commercial shipping men.

Any claim must be made in writing and claimants' Arbitrator to be appointed within twelve (12) months of final discharge or termination of this Charter Party whichever the case may be, and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred. No award be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his / her acting be taken within seven (7) days of the appointment being made).

**Clause 66:**

100% (one hundred per cent) freight is payable on signing / releasing Bill(s) of Lading.

Owners undertake to release "Freight pre-paid" Bill(s) of Lading if/as required by Charterers immediately upon receipt of 100% freight into Owners' nominated bank account.

Balance for freight with demurrage / despatch, if any, to be settled within 30 days after completion of discharging.

Clean Mate's Receipts to be signed for each parcel of cargo when on board and Master to sign Bill(s) of Lading in accordance therewith as requested by Charterers / Shippers or their agents. Master to reject any cargo which would involve the clausung of Mate's Receipts and/or Bill(s) of Lading but Charterers to remain fully responsible for the discharge / removal and disposal of said cargo as well as the replacement of the same with sound cargo. Charterers' option to accept "claused" cargo, but relevant Bill(s) of Lading to be claused accordingly. Owners' P. & I. Club and Charterers will work together to find a suitable solution should "claused" Bill(s) of Lading become problematical.

At discharge port, in absence of original Bill(s) of Lading, Owners / vessel to discharge and release cargo against Charterers' single Letter of Indemnity in Owners' P. & I. Club wording signed by Charterers' only.

**Clause 67 – Stevedore Damage Clause:**

Any Stevedore damage to the vessel to be reported by the Master to the party causing same as soon as any damages have been discovered but not later than vessel's sailing from the port where damage occurred. Such damages to be repaired prior vessel's departure by party causing same and Charterers to assist Owners, but not to be held responsible.

**Clause 68:**

All taxes / dues on cargo to be for Charterers' account.

All taxes / dues on vessel / freight to be for Owners' account



RIDER CLAUSES TO M.V. "INTERGIS CO. LTD TBN"  
CHARTER PARTY DATED OSLO: 8<sup>TH</sup> MARCH 2013

Clause 69:

This fixture to be kept absolutely private and confidential.

WORKING  
COPY

# **EXHIBIT C**



**PASTERNAK, BAUM & CO., INC.**  
500 MAMARONECK AVENUE, HARRISON, NY 10528

TELEPHONE:  
(914) 630-8000  
FAX  
(914) 630-8120

Contract Number: 108448  
Contract Date: 01/23/2014

SELLER: BTG Pactual Commodities (Singapore)Pte.Ltd.  
One Marina Boulevard #28-00  
Singapore 018989

BUYER: Marubeni America Corporation  
375 Lexington Avenue  
New York, NY 10017-5644

GOODS: BRAZILIAN SOYABEANS, SPECIFICATIONS AS PER ANEC CTR. 41  
CLAUSE 2: BASIS 18,5% OIL CONTENT, MINIMUM 18,0% WITH  
NON-RECIPROCAL ALLOWANCE OF 1,5% FOR EACH 1% FRACTION IN  
PROPORTION, IN BUYERS FAVOR FOR ANY DEFICIENCY; MOISTURE MAX. 14 %,  
FOREIGN MATERIALS BASIS 1% MAX. 2%, WITH NON-RECIPROCAL ALLOWANCE  
OF 1% FOR EACH 1% DEFICIENCY FRACTIONS IN PROPORTION. SPLITS: 20.0%  
BASIS, 25% MAXIMUM. IF SPLITS IS BETWEEN 20,01% UP TO 25,00%  
MAXIMUM, THE SELLER SHALL PAY TO THE BUYER AN ALLOWANCE OF 1% OF  
THE CONTRACT PRICE FOR EACH 1% EXCESS (1:1), FRACTIONS IN  
PROPORTION. SPLITS 20,00% OR LESS FREE TO BUYERS. ALL OTHER AND  
QUALITY CONDITIONS AS PER ANEC 41 CLAUSE 2.

QUANTITY: 60.000 METRIC TONS WITH 10 (TEN) PERCENT MORE OR LESS AT  
VESSEL'S OPTION AND AT CONTRACT PREMIUM. IN BULK.

DELIVERY PERIOD: BETWEEN JULY 15 AND AUGUST 15, 2014, BOTH DATES  
INCLUDED.

PRE-ADVICE: 12 DAYS.

PRICE: FREE ON BOARD, STOWED/TRIMMED ON ONE SELF-TRIMMING BULK  
CARRIER (WING/DEEP TANKS EXCLUDED) ON ONE SAFE BERTH AT ONE SAFE  
PORT TO BE DECLARED AT SELLER'S OPTION LATEST JUNHO 15, 2014,  
BETWEEN FOLLOWING PORT OPTIONS, BEING:  
OPTION 1 - SANTOS/SP PORT, BRAZIL, IN A BERTH WITH MINIMUM 13  
METERS DRAFT OR APPROACHED THERE TO:  
AT USD 0,72 PER BUSHEL OVER CBOT JULY/2014.

OPTION 2 - SÃO FRANCISCO DO SUL/SC PORT, BRAZIL:  
AT USD 0,72 PER BUSHEL OVER CBOT JULY/2014.

OPTION 3 - RIO GRANDE/RS PORT, BRAZIL, IN A BERTH WITH MINIMUM 42  
FEET DRAFT: AT USD 0,72 PER BUSHEL OVER CBOT JULY/2014.

OPTION 4 - TUBARÃO/ES PORT, BRAZIL:  
AT USD 0,69 PER BUSHEL OVER CBOT JULY/2014.

FUTURES IN EXCHANGE, BUYER'S GIVE UP - PRICING TO BE PERFORMED AS

PER ANEC 41, CLAUSE 5.2.B AND 5.2.C.

CONVERSION RATE: 36.7433

WEIGHT/QUALITY: FINAL AT PORT OF LOADING AS PER CERTIFICATE ISSUED BY INDEPENDENT SURVEYOR, MEMBER OF BRAZILIAN ASSOCIATION OF SURVEYING COMPANIES, ASCB (ASSOCIAÇÃO DAS SUPERVISORAS E CONTROLADORAS DO BRASIL) TO BE CHOSEN BY BUYER BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT, AT SELLER'S ACCOUNT.

PAYMENT: CASH 48 HOURS AFTER RECEIPT OF COPIES OF THE FOLLOWING DOCUMENTS BY E-MAIL:  
(SELLERS TO SEND ORIGINAL DOCUMENTS TO BUYERS BY COURIER RIGHT AFTER PAYMENT CONFIRMATION)

- 1.SIGNED COMMERCIAL INVOICE.
- 2.FULL SET OF 'CLEAN ON BOARD' BILLS OF LADING MARKED 'FREIGHT PREPAID' AND MADE OUT TO ORDER AND BLANK ENDORSED.
- 3.CERTIFICATE OF ORIGIN ISSUED BY A GOVERNMENT ENTITY.
- 4.CERTIFICATE OF WEIGHT ISSUED BY INDEPENDENT SURVEYOR AT BUYER'S OPTION BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT AT SELLER'S ACCOUNT.
- 5.CERTIFICATE OF QUALITY ISSUED BY INDEPENDENT SURVEYOR AT BUYER'S OPTION BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT AT SELLER'S ACCOUNT.
- 6.FUMIGATION CERTIFICATE ISSUED BY INDEPENDENT SURVEYOR OR FUMIGATION COMPANY AT SELLER'S OPTION AT FINAL LOADPORT.
- 7.SHIP'S HOLD INSPECTION CERTIFICATE ISSUED BY INDEPENDENT SURVEYOR AT BUYER'S OPTION BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT AT SELLER'S ACCOUNT.
- 8.PHYTOSANITARY CERTIFICATE WITH STANDARD FORMAT ISSUED BY GOVERNMENT AUTHORITY.
- 9.LABORATORY CERTIFICATE ISSUED BY INDEPENDENT SURVEYOR AT BUYER'S OPTION BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT AT SELLER'S ACCOUNT CERTIFYING THAT THE SOYBEANS ARE SUBSTANTIALLY FREE FROM THE FOLLOWING DISEASES, PESTS, AND WEEDS DANGEROUS TO PLANTS IN ACCORDANCE WITH THE REGULATIONS OF THE MINISTRY OF AGRICULTURE OF THE PEOPLE'S REPUBLIC OF CHINA.

- 1.ARABIS MOSAIC VIRUS
- 2.CALLOSOBRUCHUS ANALIS (FABRICIUS)
- 3.CALLOSOBRUCHUS PHASEOLI (GYLLENHALL)
- 4.CUSCUTA SPP
- 5.PHYTOPHTHORA MEGASPERMA DRECHSL F. SP GLYCINEA KUAN &

ERWIN

- 6.SORGHUM ALMUM PARODI
- 7.SORGHUM HALEPENSE (L.) PERS
- 8.SOUTHERN BEAN MOSAIC VIRUS
- 9.TOBACCO RINGSPOT VIRUS
- 10.TOMATO RINGSPOT VIRUS

THE SOYBEANS SUPPLIED ARE SUBSTANTIALLY FREE FROM CASTOR SEEDS/HUSKS, FOREIGN POISONOUS SEED, UREA AND/OR CHEMICAL SUBSTANCES THAT ARE NOT A NATURAL PART OF SOYBEANS AND/OR OF FAIR MERCHANTABLE QUALITY.

THE SOYBEANS SUPPLIED ARE IN GOOD CONDITION, FIT FOR HUMAN EDIBLE PURPOSE, WITHOUT ANY UNPLEASANT ODOR, FREE FROM ANY SIGN OF MOLD, FERMENTATION OR DETERIORATION AS WELL AS FREE FROM EVIDENCE OF PLANT INJURIOUS DISEASES.

10.CERTIFICATE OF CHEMICAL RESIDUES ISSUED BY INDEPENDENT SURVEYOR AT BUYER'S OPTION BETWEEN INSPECTORATE, BALTIC, ALEX STEWART, INTERTEK, SCHUTTER AND SUPERISPECT AT SELLER'S ACCOUNT CERTIFYING THAT THE CHEMICAL RESIDUES OF THE SOYBEANS SUPPLIED BY THE SELLER SHOULD NOT EXCEED THE REGULATIONS STIPULATED BY THE MINISTRY OF PUBLIC HEALTH OF THE PEOPLE'S REPUBLIC OF CHINA AND SUBSTANTIATED BY A QUALIFIED INDEPENDENT LABORATORY AT LOADING:

1. ARSENIC COMPOUND SHALL BE MAXIMUM OF 1 PPM (1 PART PER MILLION CALCULATED ACCORDING TO THE ARSENIUS OXIDE (AS2O3) CONTENT).
2. PHOSPHIDES SHALL BE MAXIMUM OF 0.05PPM (0.05 PARTS PER MILLION CALCULATED ACCORDING TO THE PH3 CONTENT).
3. CYANIDES SHALL BE MAXIMUM OF 5PPM (5 PARTS PER MILLION CALCULATED ACCORDING TO THE HCN CONTENT).
4. MALATHION SHALL BE MAXIMUM OF 3PPM (3 PARTS PER MILLION).
5. MERCURIC COMPOUND SHALL NOT BE FOUND.
6. ETHYLENE DEBROMIDE (EDB) CONTENT SHALL NOT EXCEED 10PPB (10 PARTS PER BILLION).

SPECIAL CLAUSE:

-NOTHING IN THIS CONTRACT SHALL OBLIGE A PARTY TO PERFORM ANY OBLIGATION IF SUCH PERFORMANCE WOULD BE IN CONTRAVENTION OF OR INCONSISTENT WITH ANY LAWS, REGULATIONS, STATUTES OR PROHIBITIONS IMPOSED BY THE UNITED STATES OF AMERICA, OR THE UNITED NATIONS, OR THE EUROPEAN UNION, OR THE UNITED KINGDOM, OR CANADA OR ANY OTHER COUNTRY APPLICABLE TO THE PARTIES RELATING TO THE ADOPTION, IMPLEMENTATION AND ENFORCEMENT OF ECONOMIC SANCTIONS, EXPORT CONTROLS, TRADE EMBARGOES OR OTHER RESTRICTIVE MEASURES INCLUDING BUT NOT LIMITED TO THOSE MEASURES WHICH

PROHIBIT OR OTHERWISE RESTRICT EITHER PARTY'S ABILITY TO IMPORT OR EXPORT PRODUCT, OR SUPPLY PRODUCT OR SERVICES, DIRECTLY OR INDIRECTLY ("SANCTIONS") TO ANY COUNTRY (OR NATIONAL OR GOVERNMENT THEREOF), STATE, TERRITORY, REGION, INCORPORATED ENTITY, NATURAL OR OTHER LEGAL PERSON (OR ANY ENTITY WHICH IS MAJORITY-OWNED OR CONTROLLED BY OR ACTING ON BEHALF OF SUCH A PERSON) ("SANCTIONED ENTITY").

-FOR THE AVOIDANCE OF DOUBT, NEITHER PARTY SHALL BE REQUIRED TO ACCEPT A NOMINATION OF OR SHIP OR ACCEPT A CARGO ON BOARD A VESSEL THAT IS A, OR THAT IS OWNED, CHARTERED, MANAGED OR CONTROLLED, DIRECTLY OR INDIRECTLY BY ANY, SANCTIONED ENTITY.

THE BUYER AND SELLER WARRANT COMPLIANCE WITH SANCTIONS IN ALL RESPECTS RELATED DIRECTLY OR INDIRECTLY TO THE PERFORMANCE OF THIS CONTRACT.

-THE BUYER SHALL NOT RESELL OR TRANSPORT THE COMMODITY TO ANY SANCTIONED ENTITY, OR TRANSPORT THE COMMODITY ON ANY VESSEL OR OTHER CARRIER OWNED, FLAGGED OR CHARTERED BY, ANY SANCTIONED ENTITY.

OTHER CONDITIONS:

-THE VALIDITY OF THIS CONTRACT SHALL NOT BE AFFECTED BY NON-RETURN OF A SIGNED COPY.

-ANY EXTRA CHARGES APPLIED FOR LOADING SINGLE/TWEEN DECKERS, WING AND/OR DEEP TANKS TO BE FOR BUYERS ACCOUNT.

-CARRYING CHARGES: AS PER ANEC 41, CLAUSE 10.

-NO CARRING CHARGES TO APPLY IF VESSEL TENDER CORRESPONDING NOTICE OF READNESS (NOR) AT LOADING PORT UNTIL 17:00 HS DURING ORDINARY OFFICE HOURS UP TO AND INCLUDING THE LAST DAY OF SHIPMENT PERIOD.

-LOADING RATE: 8.000 MT PER WWDSATPMSHEX EVEN IF USED. WIPON/WIBON/WIFPON. AS PER ANEC 9.2.

-DEMURRAGE/DESPATCH RATE: AS PER C/P TO BE DECLARED UPON CHARTERING OF THE VESSEL. DEMURRAGE NOT TO EXCEED USD 30.000,00 AND HALF DESPATCH. DESPATCH ON WORKING TIME SAVED.

-FUMIGATION TO BE SUPPLIED BY SELLERS AND TIME TO COUNT AS LAYTIME. (EXCEPT IN CASE FUMIGATION STOPS OR IS DELAYED DUE TO REASONS BEYOND SELLER'S RESPONSABILITY - IN THIS CASE TIME LOST NOT TO COUNT AS LAYTIME).

-INFRAMAR/TUP TAX (PORT UTILIZATION TAX) FOR SELLER'S ACCOUNT.

-ARBITRATION AS PER CLAUSE 16.A OF ANEC CTR 41.

-ALL OTHER TERMS AND CONDITIONS NOT IN CONTRADICTION WITH THE ABOVE TO BE AS PER ANEC CTR 41 IN FORCE AT TIME AND PLACE OF SHIPMENT.

Page 5

Marubeni America Corporation  
(Buyer)

By: \_\_\_\_\_  
(Signature)

Pasternak, Baum & Co., Inc.

By: \_\_\_\_\_  
(As Brokers Only)

BTG Pactual Commodities (Singapore) Pte. Ltd.  
(Seller)

By: \_\_\_\_\_  
(Signature)

# **EXHIBIT D**

SALE AND PURCHASE AGREEMENT

This Agreement made and entered into this 2nd day of April, 2015 by and between Marubeni Corporation, a corporation duly organized and existing under the laws of Japan, with its principal office at 4-2, Ohtemachi 1-chome, Chiyoda-ku, Tokyo, Japan (hereinafter called the "Seller") and CRC Cargo Recovery Consultants S.A. of 6 rue Neuve, 1260 Nyon, Switzerland (hereinafter called the "Buyer"),

Witnesseth:

Whereas, the Seller is engaged in the business, among other things, of selling Brazilian soybeans loaded on board MV ADAMASTOS at Rio Grande Port in August 2014 and believed to be 59,675mts and made an integral part hereof (hereinafter called the "Cargo"), originally supplied by Bunge Limited, a corporation duly organized and existing under the laws of the state of U.S.A., with its principal office at 50 Main Street White Plains, New York, New York, U.S.A. (hereinafter called "Bunge"), and now owned by the Seller and desires to sell the same to the Buyer;

Whereas, the Cargo, is subject to Brazilian court actions, is laden on board the Ship named "Adamastos," which is now arrested by Brazilian Government in the seaport of Rio Grande and the object of the auction procedure in Brazilian Court initiated on 11<sup>th</sup> March, 2015; and

Whereas, the Cargo is insured for all risk of loss of or damage by Sompo Japan Nipponkoa Insurance Inc., a corporation duly organized and existing under the laws of Japan, with its principal office at 26-1, Nishi-Shinjuku 1-chome, Shinjuku-ku, Tokyo, Japan (hereinafter called the "underwriter").

Whereas, the Buyer desires to purchase the Cargo from the Seller on the terms and conditions hereinafter set forth.

Now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:



**Article 1. Sale and Purchase**

- 1.1. The Seller agrees to sell and deliver and the Buyer agrees to purchase, take delivery of and pay for the Cargo on the terms and conditions and at the price hereinafter set forth.

**Article 2. Price**

- 2.1. The price of the Cargo shall be the lump sum price of US\$ 3.35 million subject to the other terms set out herein. Any levy or duties that may be applied by relevant authority, including sales tax or other tax relating to any prior sales and purchase transactions shall be for the account of the Seller. Any sales tax or other tax relating to the sale of the cargo which is the subject of this Agreement shall be borne by the Buyer.

**Article 3. Payment Terms**

- 3.1. All sums due from the Buyer to the Seller for the Cargo sold hereunder (hereinafter called the "Funds") shall be paid into client account of K&L Gates, LLP as security for the Buyer's performance of this Agreement. Such payment shall be made by wire transfer no later than five (5) days prior to the estimated departure date of the vessel and tow from Rio Grande, Brazil, and the payment will be released to the Seller by K&L Gates, LLP upon receipt of the confirmation from the Lloyd's Agent set forth in Article 3.2, below.
- 3.2. The Funds will be retained by K&L Gates, LLP until the Vessel has departed from Brazilian territorial waters. For the avoidance of the doubt, the Seller shall not be entitled to the Funds until confirmation from Lloyd's Agent at Rio Grande that the Vessel has departed from Brazilian territorial waters.
- 3.3. In the event for whatever reason, the Vessel has not departed from Brazilian territorial waters by 25 April 2015 then the Funds held by K&L Gates LLP shall be returned to the Buyer or subject to agreement by the parties, shall be held as security for further period of 30 days, or as thereafter may be extended by the parties, for the Vessel to depart from Brazilian territorial waters.



Article 4. Terms of Delivery and Title to the Products

- 4.1. The Buyer shall receive the Cargo in present condition on "as-is, where is" basis unless otherwise agreed between the parties hereto.
- 4.2. On receipt of the Funds by K&L Gates, LLP under Article 3.1 above title to the Cargo shall pass to the Buyer. In the event that the Vessel has not left the territorial waters of Brazil by 25 April 2015, or such later date as agreed under Article 3.3 above, and in the opinion of the Buyer has no prospect of so doing so that the Funds cannot be released to the Seller, then title to the Cargo shall immediately pass back to the Seller and the Buyer shall promptly execute any necessary documents to effect this transfer. Insurable interest for the cargo shall remain with the Seller until the vessel leaves the territorial waters of Brazil.
- 4.3 The Seller will provide the Buyer with full sets of all original documents as first issued for the cargo at time of loading at Rio Grande, including full sets of original Mate's Receipts for the cargo as set out in Schedule 1 hereto. The Seller further warrants and confirms to the Buyer that no original B/L's were ever issued for the cargo and that to the best of their knowledge, no other document of title is in circulation or exists in respect to the Cargo now on board the ADAMASTOS.
- 4.4 Unless otherwise provided herein, the risk in the Cargo will pass from the Seller to the Buyer at the time the Seller receives payment in full of the sums identified at Article 2.1, it being expressly recognised that the Buyer does not receive the benefit of the insurance cover provided by Sompo Japan Nipponkoa Insurance Inc.
- 4.5 In the event that the Vessel is unable to leave Brazil the risk of the wasted expenditure by the Buyer under this agreement to facilitate the departure of the Vessel from Brazil will rest with the Buyer.

Article 5. Intentionally Left Blank



Article 6. Undertaking of the Buyer

- 6.1. In consideration of this agreement, the Buyer undertakes to settle the following claims at its own

expenses in Brazil as soon as possible after receiving written confirmation of the settlement figures and terms from the prosecutor's office and or the court officials.

- i.) Labour Court Claims and Crew claims up to maximum Brazilian Reals \$ 4,828,203 (equivalent today to about US\$ 1,609,401).
  - ii.) The claims of Bunge in respect to the sequestered funds held by the Brazilian State and Courts in the amount of Brazilian Reals \$ 1.00 million. (equivalent to about US\$ 333,000).
  - iii.) The Court fees of 4 % calculated on the figure of Brazilian Reals \$ 3.00 mil (ie. Brazilian Real \$ 120,000 or about US\$ 40,000).
- 6.2. Concurrent with the above Buyer warrants and undertakes to settle the claims arising in Brazil in connection with the Vessel or the Cargo as set out in Schedule 2 hereto.
- 6.3. The Buyer will, as soon as practicable, engage a tug for purposes of towing the ship out from Brazil on or before April 25th.

**Article 7. Cooperation with the Underwriter's representatives**

- 7.1. Underwriter's legal representatives in Brazil will attend and assist the Buyer and the Seller as far as possible to ensure that the Court duly acknowledges receipt of the Funds referred to in Article 6 and to ensure thereafter the cancellation of the auction.
- 7.2 For the avoidance of the doubt, Mr. Carlos Portugal Gouvêa is the local representative of the Buyer, who will endeavour to have the court proceedings withdrawn with the support of Underwriter's representatives in Brazil
- 7.3 In any event, should amounts other than those in Article 6 have to be paid by the Buyer prior to 11<sup>th</sup> March in order to cancel the auction, or should other amounts be required for payment to ensure the Vessel is free to leave Brazilian waters, such amounts shall be deducted from the purchase price stated in Article 2.1. Seller shall not be responsible or liable for any amounts paid in the event the purchase price is exhausted by any such payments. If amounts are deducted from the purchase price under this clause then, after agreement of the parties to the reduced purchase price
- 
- 

to the Seller, the balance remaining of the Funds held by K&L Gates LLP shall be promptly returned to the Buyer.

**Article 8. Warranty**

- 8.1. THE SELLER WARRANTS THAT THE CARGO HAS BEEN FULLY PAID FOR BY THE SELLER AND IS BENEFICIALLY OWNED BY THE SELLER AT THE TIME OF THIS AGREEMENT AND THAT THE SELLER IS ABLE TO PASS GOOD BENEFICIAL TITLE TO THE BUYER. THE SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, CONCERNING THE CARGO, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Article 9. Waiver and Indemnity**

- 9.1. Save for the matters already disclosed to the Buyer the Seller is not aware of any other claim, demand or encumbrance currently existing against the Cargo. To the extent that disclosure to the Buyer has previously been made, and subject to clause 7.3 herein the Seller shall not be liable for any cost, expense, loss, damage or liability arising out of or in relation to any claim made or threatened to be made by any third party based on any damage occurring or suspected to occur directly or indirectly out of the Cargo (collectively the "Liabilities"), including without limitation, a claim based on infringement of Cargo ownership by Bunge or overdue salaries or other labour rights by Adamastos's crew or unpaid price for goods, supplies or services provided to the owner of Adamastos by its creditors or court fees or other administrative costs by the relevant authorities.

**Article 10. Limitation of Liability**

- 10.1. IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER, SUCCESSORS, TRANSFEREES OR ASSIGNS FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, INCURRED BY OR CLAIMED AGAINST THE BUYER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THE BUYER HEREBY EXPRESSLY WAIVES AND FORGOES ANY RIGHT TO PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, IF ANY, THAT THE BUYER MIGHT HAVE AGAINST THE SELLER HEREUNDER OR

OTHERWISE. FURTHERMORE, IN NO EVENT SHALL THE SELLER'S LIABILITY HEREUNDER OR OTHERWISE EXCEED THE PRICE OF THE PRODUCTS SOLD HEREUNDER.

Article 11. Compliance

- 11.1. The Buyer shall comply, and cause its customers, agents and any other parties with which the Buyer has any contractual relationship to comply, with all applicable laws, orders and regulations in connection with the transactions contemplated hereby. The Buyer hereby represents and warrants that it has no reason to believe that the Buyer and/or any other party, whether or not the Buyer has any contractual relationship with such party, has made or may make a violation of any applicable law, order or regulation in connection with transactions contemplated hereby.

Article 12. Term

- 12.1. This Agreement shall become effective on the date first above written.

Article 13. Termination

- 13.1. The Seller may forthwith terminate this Agreement by notice to such effect to the Buyer if the Buyer commits a breach of any term or condition contained in this Agreement and fails to remedy the same within 21 days after notice from the Seller setting out the nature of such breach and demanding that the same be remedied; provided, however, that if the Buyer fails to make any payment due and payable to the Seller under this Agreement, the Seller may forthwith terminate this Agreement by notice to such effect to the Buyer without requesting the Buyer to remedy such failure.
- 13.2. The Seller may forthwith terminate this Agreement by notice to such effect to the Buyer if bankruptcy, insolvency, reorganization or rehabilitation proceedings, or other proceedings analogous in nature or effect, are instituted by or against the Buyer, the Buyer is dissolved or liquidated, whether voluntarily or involuntarily, a receiver or trustee is appointed for all or a substantial part of the Buyer's assets, the Buyer makes an assignment for the benefit of creditors, or the Buyer generally suspends payment of its debts when the same become due.

Article 14. Acceleration and Set-Off

- 14.1. If any of the events described in Articles 13.1 and 13.2 hereof has occurred with respect to the Buyer, the Seller shall be entitled to set off any amounts payable to the Seller by the Buyer under this Agreement, whether due or not, against those payable to the Buyer by the Seller under this Agreement.

Article 15. Rights and Obligations after Termination or Expiration

- 15.1. No termination or expiration of this Agreement, for whatever reason, shall affect any right of the Seller or the Buyer which has accrued prior to the date of such termination or expiration.

Article 16. Force Majeure

- 16.1. The Seller shall not be liable in any manner for failure to perform or delay in performing all or any part of this Agreement, which is directly or indirectly due to any causes or circumstances beyond the control of the Seller, including, without limitation, acts of God, fire, flood, storms, earthquake, typhoon, tidal wave, tsunami, plague or other epidemics, governmental laws, other regulations, sanctions, or restrictions, war (whether declared or not), armed conflict, terrorism or the serious threat of the same, hostilities, mobilization, blockage, embargo, detention, revolution, riot, looting, lockout, strike or other labor dispute, unavailability of transportation, severe economic dislocation (including, but not limited to, the inability of the Seller to obtain an adequate supply of oil, gas, electricity or material with which to maintain its/their normal level of operations).
- 16.2. If any event set forth in Article 16.1 above occurs, but subject to Article 3.3 herein, the Seller shall have the right, in its sole discretion, to terminate this agreement.

Article 17. Governing Law

- 17.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. This

Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**Article 18. Arbitration**

- 18.1. All disputes, controversies or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement or for the breach hereof or thereof, which cannot be resolved amicably by the parties within 30 days shall be finally settled by arbitration in London, England in accordance with the then existing Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators to be selected in accordance with said Rules. The arbitration shall be held in the English language.
- 18.2. The award rendered therein shall be final and binding upon both parties.

**Article 19. Entire Agreement**

- 19.1. This Agreement constitutes the entire agreement between the parties hereto regarding the sale and purchase of the Cargo and wholly cancels, terminates and supersedes all previous negotiations, agreements and commitments, whether formal or informal, oral or written, with respect to the subject matter hereof.

**Article 20. Amendments**

- 20.1. This Agreement shall not be amended, changed or modified in any manner except by an instrument in writing signed by a duly authorized representative of the party against whom enforcement is sought.

**Article 21. Assignment**

- 21.1. This Agreement shall be binding upon and inure to the benefit of the Seller and the Buyer, and their respective successors and permitted assigns.
- 21.2. The Buyer shall not assign, transfer or otherwise dispose of its rights or obligations under this Agreement, in whole or in part.

Article 22. No Waiver

- 22.1. No failure to exercise or delay in exercising any right or remedy by the Seller under this Agreement shall operate as a waiver thereof or of any other right or remedy which the Seller may have hereunder, nor shall any single or partial exercise of such right or remedy preclude any further exercise thereof or of any other right or remedy which the Seller may have hereunder.
- 22.2. The rights and remedies provided herein are cumulative and not exclusive of any rights and remedies provided by law, in equity or otherwise.

Article 23. Severability

- 23.1 If any provision or any portion of any provision of this Agreement is adjudged, by a court of competent jurisdiction, to be invalid, illegal or unenforceable, such provision or portion shall be deemed to be deleted from this Agreement and the validity of the remaining portions of this Agreement shall remain unaffected thereby.

Article 24. Notices

- 24.1. All notices, requests or other communications required or permitted to be given hereunder shall be in writing in the English language and shall be sent by registered airmail letter, postage prepaid, or facsimile to the other party at its address set forth below or to such other address as may from time to time be notified by one party to the other in accordance with this Article 24.1:

If to the Buyer:

Cargo Recovery Consultants Ltd.  
Harrow House, 23 West Street,  
Haslemere / Surrey GU27 2AB, UK.  
E mail: cargo.recovery@crc.net.uk  
Attention Malcolm Arrowsmith, and

CRC Cargo Recovery Consultants S.A.  
6 Rue Neuve, 1260 Nyon, Switzerland.

E mail: crc@crcswiss.ch  
Attention Mrs. Barbara Guner

Attention:  
Facsimile No.: 00 44 1428 641100. And  
Switzerland: 00 41 22 362-4831.

If to the Seller:

Marubeni Corporation  
4-2, Ohtemachi 1-chome  
Chiyoda-ku, Tokyo 100-8088, Japan  
Attention: F. Seyama  
/ General Manager, Grain Dept.-I  
Facsimile No.: +81 3-3282-4753

- 24.2. All notices shall be deemed to have been given when  
duly transmitted by facsimile or deposited in the mail.

Article 25. Headings

- 25.1. The headings of this Agreement are inserted for  
convenience of reference only and shall not affect the  
construction or interpretation hereof.

Article 26. Counterparts

- 26.1. This Agreement may be executed in two or more  
counterparts each of which shall be deemed an original,  
but all of which together shall constitute one and the  
same instrument.

*This space below is intentionally left blank*

Handwritten signature and initials in the bottom right corner of the page.



In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective, duly authorized representatives as of the day and year first above written.

Marubeni Corporation

A handwritten signature in black ink, appearing to read 'F. Seyama', is written over a horizontal line.

Name: F. Seyama

Title: General Manager

CRC CARGO RECOVERY CONSULTANT S.A.

A handwritten signature in black ink, appearing to read 'Malcolm Arrowsmith', is written over a horizontal line.

Name: Malcolm Arrowsmith

Title: Director

A handwritten signature in black ink, possibly reading 'K9', is located in the bottom right corner of the page.